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G. L. C.

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A BILL TO BE ENTITLED
AN ACT

relating to certain regulatory functions and procedures of the Texas Department of Health involving screening of children who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services; providing for certification of screeners of children and trainers of screeners; providing for a program of remedial services and approval criteria for providers of remedial services, and eligibility criteria; providing for notice and hearing upon denial, modification, suspension or revocation of affected interests; providing emergency authority; providing for penalties; establishing an interagency committee on special senses and communication disorders; amending Article 4419g, Vernon's Texas Civil Statutes; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Special Senses and Communication Disorders Act, Chapter 568, Acts of the 68th Legislature, Regular Session, 1983, (Article 4419g, Vernon's Texas Civil Statutes), is revised to read as follows:

ARTICLE I. GENERAL PROVISIONS.

Sec. 1.01. SHORT TITLE. This Act may be cited as the Special Senses and Communication Disorders Act.

Sec. 1.02. PURPOSE. (a) The purpose of this Act is to establish a program to identify, at as early an age as possible, those individuals from birth through 20 years of age who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services. Early detection, remediation, and prevention of those disorders provide the individuals with the opportunity to reach increased academic and social status through adequate educational planning and training.

(b) This Act shall be implemented in accordance with the provisions of professional license laws that pertain to professional examinations and remedial services for individuals with special senses and communication disorders.

Sec. 1.03. DEFINITIONS. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the commissioner of health.

(3) "Communication disorder" means an abnormality of functioning related to the ability to express and receive ideas.

(4) "Department" means the Texas Department of Health.

(5) "Other benefit" means a benefit, other than a benefit under this Act, to which an individual is entitled for payment of the costs of remedial services, and includes:

(A) benefits available under:

(i) an insurance policy, group health plan or prepaid medical care plan;

(ii) Title XVIII of the Social Security Act;

1 (iii) Title XIX of the Social Security Act;
2 (iii) the Veteran's Administration;
3 (iv) the Civilian Health and Medical Program of the Uniformed Services;
4 and
5 (v) worker's compensation or any other compulsory employers insurance
6 program;
7 (B) a public program created by federal or state law, or by ordinance
8 or rule of a municipality or political subdivision of the state, except those
9 benefits created by the establishment of a city or county hospital, a joint
10 city-county hospital, a county hospital authority, a hospital district, or by
11 the facilities of a publicly supported medical school; or
12 (C) benefits resulting from a cause of action health care expenses, or
13 a settlement or judgment based upon the cause of action, if the expenses are
14 related to the need for services provided under this Act.
15 (6) "Preschool" means an educational or child-care facility or
16 institution that admits children who are newborn through five years of age.
17 (7) "Professional examination" means an assessment or evaluation
18 performed by an appropriately licensed professional whose area of expertise
19 addresses the needs of an individual identified as having a possible special
20 senses or communication disorder.
21 (8) "Provider" means a person who provides remedial services to
22 individuals who have special senses and communication disorders, and includes
23 a physician, audiologist, speech pathologist, optometrist, psychologist,
24 special educator, hospital, clinic, rehabilitation center, university, or
25 medical school.
26 (9) "Remedial services" means professional examinations and prescribed
27 remediation, including prosthetic devices, for individuals with special senses
28 or communication disorders.
29 (10) "School" means an educational institution that admits children who
30 are five years of age or older but younger than 21 years of age.
31 (11) "Screening" means a test or battery of tests administered to
32 rapidly determine the need for a professional examination.
33 (12) "Special senses" means the faculties by which the conditions or
34 properties of things are perceived, and includes vision and hearing.
35 Sec. 1.04. RESEARCH; REPORT TO LEGISLATURE. (a) The department may
36 conduct research and compile statistics on the provision of remedial services
37 to individuals with special senses and communication disorders and on the
38 availability of those services in the state.
39 (b) The department shall compile and publish a report for the
40 legislature on or before February 1 of each year describing the conduct of the
41 screening and remedial services programs and their impact on public health.

1 Sec. 1.05. FUNDING. The department may accept appropriations,
2 donations, and reimbursements, including donations of prosthetic devices, and
3 may apply those items to the purpose of this Act.

4 Sec. 1.06. RULE-MAKING AUTHORITY. The board by rule shall adopt
5 substantive and procedural rules to carry out the intent of this Act.

6 Sec. 1.07. CONTRACTS. The department may enter into contracts and
7 agreements necessary to administer this Act, including contracts for the
8 purchase of remedial services.

9 Sec. 1.08. INTERAGENCY COMMITTEE ON SPECIAL SENSES AND COMMUNICATION
10 DISORDERS. (a) The interagency committee on special senses and communication
11 disorders shall assist the department in coordinating among participating
12 agencies the special senses and communication disorders screening program and
13 the remedial services program.

14 (b) The committee is composed of nine members. The chief administrative
15 officer of each of the following agencies shall appoint one member to the
16 committee:

17 (1) Central Education Agency;

18 (2) Texas Commission for the Blind;

19 (3) Texas Commission for the Deaf;

20 (4) Texas Department of Community Affairs;

21 (5) Texas Department of Health;

22 (6) Texas Department of Human Services;

23 (7) Texas Department of Mental Health and Mental Retardation;

24 (8) Texas School for the Blind; and

25 (9) Texas School for the Deaf.

26 (c) A member of the committee is entitled to be reimbursed by the
27 appointing agency for expenses incurred in performing the duties required
28 under this Act. The reimbursement may not exceed the amounts specified by the
29 General Appropriations Act for transportation and per diem allowances for
30 state employees.

31 (d) The committee shall adopt written procedures for the conduct of its
32 duties and may elect officers as it finds necessary.

33 (e) The committee shall meet at least once each calendar year in Austin
34 and at other times and locations as the committee finds necessary.

35 Sec. 1.09. EMERGENCY ORDERS. (a) If the department finds an emergency
36 exists that requires immediate action to protect the public health or safety,
37 the department, without notice or hearing, may issue an order stating the
38 existence of the emergency and requiring that action be taken at the
39 department's direction to meet the emergency.

40 (b) The emergency order is effective immediately.

41 (c) A person to whom an emergency order is directed shall comply

1 immediately with that order.

2 (d) The department shall provide a person to whom an emergency order is
3 directed an opportunity for a hearing on written application to the department
4 not later than the 30th day following the date of the emergency order.

5 (e) The department shall hold a requested hearing not later than the
6 20th working day after the date of receipt of the hearing application unless
7 this requirement is waived by the person requesting the hearing.

8 (f) The department shall continue, modify, or revoke an emergency order
9 based on the hearing.

10 (g) Notice and hearing will be conducted in accordance with the
11 department's informal hearing procedures.

12 (h) Sections 13 through 20 of the Administrative Procedure and Texas
13 Register Act relating to contested case hearings do not apply to notice and
14 hearing conducted under this section.

15 Sec. 1.10. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person
16 is violating, or is threatening to violate this Act or any rule adopted or
17 order issued under this Act, the commissioner may request the attorney general
18 of this state or district, county or city attorney of the city or county in
19 which the violation has occurred, is occurring, or may occur to institute a
20 civil suit for:

21 (1) an order enjoining the act or practice or an order directing
22 compliance;

23 (2) a permanent or temporary injunction, restraining order, or other
24 appropriate order if the department shows that the person is engaged in or is
25 about to engage in any of the acts or practices;

26 (3) the assessment and recovery of a civil penalty; or

27 (4) both the injunctive relief and civil penalty.

28 (b) The penalty may be in an amount not to exceed \$5,000 a day for each
29 violation, not to exceed a total penalty of \$50,000 for each violation. Each
30 day of violation constitutes a separate violation for purposes of penalty
31 assessment.

32 (c) In determining the amount of the penalty, the court shall consider
33 the person's history of previous violations, the seriousness of the violation,
34 any hazard to the health and safety of the public, and the demonstrated good
35 faith of the person charged.

36 (d) Any civil penalty recovered in a suit instituted by the attorney
37 general under this Act shall be deposited in the state treasury to the credit
38 of the general revenue fund. Any civil penalty recovered in a suit instituted
39 by a local government under this Act shall be paid to the local government.

40 (e) This section does not affect any other right of an employee or any
41 other person to receive compensation for damages under other law.

1 Sec. 1.11. ADMINISTRATIVE PENALTY. (a) The department may assess a
2 civil penalty as provided by this section against a person who violates this
3 Act or a rule or order adopted under this Act.

4 (b) The penalty may be in an amount not to exceed \$1,500 per violation.
5 Each day a violation continues may be considered a separate violation for
6 purposes of penalty assessment.

7 (c) In determining the amount of the penalty, the commissioner shall
8 consider a history of previous violations, seriousness of the violation, any
9 hazard to the health and safety of the public, the demonstrated good faith of
10 the person charged, and any other matters that justice requires.

11 (d) The administrative penalty may be assessed only after the employer
12 charged with the violation described in subsection (a) of this section has
13 been given the opportunity for a hearing.

14 (e) If a hearing has been held, the commissioner shall make findings of
15 fact, and shall issue a written decision about the occurrence of the violation
16 and the amount of the penalty that is warranted, incorporating, when
17 appropriate, an order requiring that the penalty be paid.

18 (f) If appropriate, the commissioner may consolidate the hearings with
19 other proceedings.

20 (g) If the person charged with the violation fails to avail himself of
21 the opportunity for a hearing, an administrative penalty may be assessed by
22 the commissioner after he or she has determined that a violation did occur and
23 the amount of the penalty that is warranted.

24 (h) After making a determination under Subsection (g) of this section,
25 the commissioner shall issue an order requiring that the penalty be paid.

26 (i) On the issuance of an order finding that a violation has
27 occurred, the commissioner shall inform the person charged within 30 days of
28 the amount of the penalty.

29 (j) Within the 30 day period immediately following the day on which the
30 decision or order is final as provided in Subsection (c), Section 16 of the
31 Administrative Procedure and Texas Register Act, (Article 6252-13a, Vernon's
32 Texas Civil Statutes), the person charged with the penalty shall:

33 (1) pay the penalty in full; or

34 (2) if the person seeks judicial review of either the amount of the
35 penalty or the fact of the violation, or both:

36 (A) the amount to the commissioner for placement in an escrow account;
37 or

38 (B) in lieu of payment into escrow, post with the commissioner a bond in
39 a form approved by the commissioner for the amount of the penalty, in a form
40 approved by the commissioner, that is effective until all judicial review of
41 the order or decision is final.

1 (k) If after judicial review of the decision or order it is determined
2 that the violation did not occur, that the penalty should not be assessed, or
3 that the amount of the penalty should be reduced, the commissioner shall, not
4 later than the 30th day after the date of the determination, if the penalty
5 has been paid to the department, remit the appropriate amount to the person,
6 with accrued interest. If a bond has been posted, the department shall
7 execute a release of the bond.

8 (l) Failure to forward the money to the commissioner within the time
9 provided by Subsection (j) of this section results in a waiver of all rights
10 to contest the violation or the amount of the penalty.

11 (m) Judicial review of the order or decision of the commissioner
12 assessing the penalty is in accordance with the substantial evidence rule and
13 shall be instituted by filing as petition with the district court of Travis
14 County, Texas, as provided for in Section 19 of the Administrative Procedure
15 and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

16 (n) Administrative penalties owed under this section may be recovered in
17 a civil action brought by the attorney general at the request of the
18 commissioner.

19 (o) A penalty collected under this section shall be deposited in the
20 state treasury to the credit of the General Revenue Fund.

21 ARTICLE II. SCREENING PROGRAM FOR SPECIAL SENSES AND COMMUNICATION
22 DISORDERS: TRAINING AND CERTIFICATION OF SCREENERS AND TRAINERS OF SCREENERS

23 Sec. 2.01. SCREENING PROGRAM FOR SPECIAL SENSES AND COMMUNICATION
24 DISORDERS. (a) The board by rule shall require screening, according to a
25 schedule, of each individual who attends public or private preschools or
26 schools to detect vision and hearing disorders and any other special senses or
27 communication disorders specified by the board. In developing the rules, the
28 board may consider the number of individuals to be screened and the
29 availability of:

30 (1) personnel qualified to administer the required screening;

31 (2) appropriate screening equipment;

32 (3) state and local funds for screening activities.

33 (b) The board may define "visual sensitivity," "vision acuity," "hearing
34 sensitivity," and "hearing acuity."

35 (c) The board may adopt definitions necessary to the implementation of
36 this Act so long as they do not conflict with its intent.

37 (d) The rules must include substantive and procedural requirements
38 necessary to administer screening activities.

39 (e) The board must adopt rules for approval of screening facilities,
40 equipment, training and curriculum, and personnel supporting the training and
41 screening.

1 (f) The board shall adopt a schedule for implementing the screening
2 requirements and shall give priority to the age groups that may derive the
3 greatest educational and social benefits from early identification of special
4 senses and communication disorders.

5 (g) The rules must provide for acceptance of results of screening
6 conducted by a licensed professional, regardless of whether that professional
7 is under contract with the department, if:

8 (1) the professional's legally defined scope of practice includes the
9 area for which the screening is conducted; and

10 (2) the professional uses acceptable procedures for the screening.

11 (h) The department may coordinate the special senses and communication
12 disorders screening activities of school districts, private schools, state
13 agencies, volunteer organizations, and other entities so that the efforts of
14 each entity are complementary and not fragmented and duplicated. The
15 department may provide technical assistance to those entities in developing
16 screening programs and may provide educational and other material to assist
17 local screening activities.

18 (i) The department may provide screening personnel, equipment, and
19 services only if the screening requirements cannot otherwise be met.

20 (j) The department shall monitor the quality of screening activities
21 provided under this Act.

22 (k) This section does not prohibit a volunteer from participating in the
23 department's screening programs.

24 Sec. 2.02. COMPLIANCE WITH SCREENING REQUIREMENTS. (a) An individual
25 required to be screened shall undergo approved screening for vision and
26 hearing disorders and any other special senses and communication disorders
27 specified by the board. The individual shall comply with the requirements as
28 soon as possible after the individual's admission to a preschool or school and
29 within the period set by the board. The individual or, if the individual is a
30 minor, the minor's parent, managing conservator, or guardian, may substitute
31 professional examinations for the screening.

32 (b) An individual is exempt from screening if screening conflicts with
33 the tenets and practices of a recognized church or religious denomination of
34 which the individual is an adherent or a member. To qualify for the
35 exemption, the individual or, if the individual is a minor, the minor's
36 parent, managing conservator, or guardian, must submit to the admitting
37 officer of the preschool or school on or before the day of admission an
38 affidavit stating the objections to screening.

39 (c) The chief administrator of each preschool or school shall ensure
40 that each individual admitted to the preschool or school complies with the
41 screening requirements set by the board or submits an affidavit to exemption.

1 Sec. 2.03. RECORDS; REPORTS. (a) The chief administrator of each
2 preschool or school shall maintain, on a form prescribed by the department,
3 screening records for each individual in attendance, and the records are open
4 for inspection by the department or the local health department.

5 (b) The department may, directly or through local health departments,
6 enter a preschool or school and inspect records maintained by the preschool or
7 school relating to screening for special senses and communication disorders.

8 (c) An individual's screening records may be transferred among
9 preschools and schools without the consent of the individual, or if the
10 individual is a minor, the minor's parent, managing conservator, or guardian.

11 (d) Each preschool or school shall submit to the department an annual
12 report on the screening status of the individuals in attendance during the
13 reporting year and shall include in the report any other information required
14 by the board. The report must be on a form prescribed by the department and
15 must be submitted according to the board's rules.

16 Sec. 2.04. QUALIFICATIONS OF PERSONS PROVIDING SCREENING AND TRAINERS OF
17 PERSONS PROVIDING SCREENING. (a) The department may require that persons who
18 administer special senses and communication disorders screening complete an
19 approved training program, and the department may train those persons and
20 approve training programs. The department may charge a fee pursuant to
21 Article 4414c, Vernon's Texas Civil Statutes for training sessions.

22 (b) The department may require that persons who administer special
23 senses and communication disorders screening or who train persons who
24 administer special senses and communication disorders screening be certified
25 in accordance with criteria established by the department.

26 (c) A person may use a screening certificate only for screening in
27 connection with the special senses and communication disorders screening
28 program administered by the department and for no other purpose unless
29 appropriately licensed or exempt under the appropriate licensing act.

30 (d) A public or private school, a school district, or non-profit
31 organizations may charge a fee for screening in an amount not to exceed the
32 cost of performing the service. Said facilities may reimburse a certificate
33 holder only for the actual expense of participation in the screening program.

34 Sec. 2.05. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF
35 CERTIFICATES FOR SCREENERS AND TRAINERS OF SCREENERS. (a) After notice to
36 the person affected and opportunity for a fair hearing, the department may
37 deny, modify, suspend, or revoke the certification of persons who administer
38 special senses and communication disorders screening or who train persons who
39 administer special senses and communication disorders screening according to
40 the criteria specified by rule.

41 (b) Notice and hearing will be conducted in accordance with the

1 department's informal hearing procedures.

2 (c) Sections 13 through 20 of the Administrative Procedure and Texas
3 Register Act relating to contested case hearings do not apply to notice and
4 hearing conducted under this section.

5 ARTICLE III. REMEDIAL SERVICES PROGRAM

6 Sec. 3.01. PROVISION OF REMEDIAL SERVICES. (a) The department may
7 provide remedial services directly or through approved providers to eligible
8 individuals who have certain special senses and communication disorders and
9 who are not eligible for duplicate special education services that remediate
10 those disorders and which are administered by the Central Education Agency
11 through the public schools.

12 (b) The board by rule shall:

13 (1) describe the type, amount, and duration of remedial services that
14 the department provides;

15 (2) establish medical, financial, and other criteria to be applied by
16 the department in determining an individual's eligibility for the services and
17 for the criteria to be applied in determining the modification, suspension,
18 emergency suspension, or revocation of the individual's eligibility;

19 (3) establish criteria for approval by the department of providers and
20 of remedial services and for the modification, suspension, emergency
21 suspension and revocation of the approval; and

22 (4) establish the procedures necessary to determine the medical,
23 financial, and other eligibility of the individual.

24 (c) The board may establish a schedule to determine financial
25 eligibility.

26 (d) The department may not require remedial services without the consent
27 of the individual or, if the individual is a minor, the minor's parent,
28 managing conservator, or guardian.

29 (e) A person who provides a professional examination or remedial
30 services authorized by this Act for vision, speech, language, or hearing
31 disorders must be appropriately licensed.

32 Sec. 3.02. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF APPROVAL
33 TO PROVIDE REMEDIAL SERVICES. (a) After notice to an applicant to provide
34 services or a provider of services and opportunity for a fair hearing, the
35 department may deny, modify, suspend, or revoke the approval of a person to
36 provide remedial services under this Article.

37 (b) Notice and hearing will be conducted in accordance with the
38 department's informal hearing procedures.

39 (c) Sections 13 through 20 of the Administrative Procedure and Texas
40 Register Act relating to contested case hearings do not apply to notice and
41 hearing conducted under this section.

1 Sec. 3.03. INDIVIDUALS ELIGIBLE FOR REMEDIAL SERVICES. (a) An
2 individual is not eligible to receive the remedial services authorized by this
3 Act to the extent that the individual or the parent, managing conservator, or
4 other person with a legal obligation to support the individual is eligible for
5 some other benefit that would pay for all or part of the services.

6 (b) The department may waive ineligibility under Subsection (a) if the
7 department finds that:

8 (1) good cause for the waiver is shown; and

9 (2) enforcement of the requirement would tend to defeat the purpose of
10 this Act or disrupt the administration or prevent the provision of remedial
11 services to an otherwise eligible recipient.

12 (c) When an application for remedial services is filed or at any time
13 that an individual is eligible for receiving remedial services, the applicant
14 or recipient shall inform the department of any other benefit to which the
15 applicant, recipient, or person with a legal obligation to support the
16 applicant or recipient may be entitled.

17 (d) The board by rule shall provide criteria for actions taken under
18 this section.

19 Sec. 3.04. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF
20 ELIGIBILITY TO RECEIVE REMEDIAL SERVICES. (a) After notice and the
21 opportunity for a fair hearing, the department may deny the application of a
22 individual and may modify, suspend or revoke the determination of an
23 individual's eligibility to receive remedial services under this Article.

24 (b) Notice and hearing will be conducted in accordance with the
25 department's informal hearing procedures.

26 (c) Sections 13 through 20 of the Administrative Procedure and Texas
27 Register Act relating to contested case hearings do not apply to notice and
28 hearing conducted under this section.

29 Sec. 3.05. REIMBURSEMENT. (a) The board may require an individual, or,
30 if the individual is a minor, the minor's parent, managing conservator, or
31 guardian, to pay or reimburse the department for a part of the cost of the
32 remedial services provided.

33 (b) The recipient or the parent, managing conservator, or other person
34 with a legal obligation to support an individual who has received remedial
35 services from the department that are covered by some other benefit shall,
36 when the other benefit is received, reimburse the department for the cost of
37 services provided.

38 Sec. 3.06. RECOVERY OF COSTS. (a) The department is entitled to
39 recover an expenditure for services provided under this Act from:

40 (1) a person who does not reimburse the department as required by this
41 Act; or

1 (2) a third party with a legal obligation to pay other benefits and who
2 has notice of the department's interests in the other benefits.

3 (b) The commissioner may request the attorney general to bring suit in
4 the appropriate court of Travis County on behalf of the department. A suit
5 brought under this section need not be ancillary or dependent on any other
6 action.

7 (c) In a judgment in favor of the department, the court may award
8 attorney's fees, court costs, and interest accruing from the date on which the
9 department provides the service to the date on which the department is
10 reimbursed.

11 (d) The board by rule shall provide criteria for actions taken under
12 this section. [Section-1,---This Act may be cited as the Special Senses and
13 Communication Disorders Act.

14 Section-2,---The purpose of this Act is to establish a program to
15 identify, at as early an age as possible, those individuals from birth through
16 20 years of age who have special senses and communication disorders and who
17 need remedial vision, hearing, speech, and language services. Early detection
18 and remediation of these disorders will provide the individuals with the
19 opportunity to achieve both academic and social status through adequate
20 educational planning and training.

21 Section-3,---In this Act:

22 (1)---"Board" means the Texas Board of Health.

23 (2)---"Communication disorder" means an abnormality of functioning related
24 to the ability to express and receive ideas.

25 (3)---"Department" means the Texas Department of Health.

26 (4)---"Preschool" means an educational or child-care institution that
27 admits children who are three years of age or older but less than five years
28 of age.

29 (5)---"Professional examination" means a diagnostic evaluation performed
30 by an appropriately licensed professional or, if no license exists in this
31 state, by a certified or sanctioned individual whose expertise addresses the
32 diagnostic needs of the individual identified as having a possible special
33 senses or communication disorder.

34 (6)---"Provider" means an individual, partnership, association,
35 corporation, state agency, or political subdivision of the state that provides
36 remedial services to individuals who have special senses and communication
37 disorders and includes a physician, audiologist, speech pathologist,
38 optometrist, psychologist, hospital, clinic, rehabilitation center,
39 university, or medical school.

40 (7)---"Remedial services" means professional examinations and prescribed
41 remediation, including prosthetic devices, for special senses or

1 communication disorders.

2 {8}--"School" means an educational institution that admits children who
3 are five years of age or older but less than 21 years of age.

4 {9}--"Screening" means a test or battery of tests for the rapid
5 determination of the need for a professional examination.

6 {10}--"Special senses" means the faculties by which the conditions or
7 properties of things are perceived and includes vision and hearing.

8 Section--4.--(a)--The board shall adopt rules for the mandatory screening
9 of individuals who attend public or private preschools or schools to detect
10 vision and hearing disorders and any other special senses or communication
11 disorders that the board may specify. The board shall adopt a schedule for
12 implementing the screening requirements and shall give priority to age groups
13 that may derive the greatest educational and social benefits from early
14 identification of special senses and communication disorders. In developing
15 the rules, the board may consider the number of individuals to be screened,
16 the availability of personnel qualified to administer the required screening
17 tests, the availability of appropriate screening equipment, and the
18 availability of state and local funds for screening activities. The rules
19 shall include provisions for acceptance of screening test results if the
20 screening test has been conducted by a licensed professional whose legally
21 defined scope of practice includes the area for which screening is being
22 performed utilizing acceptable screening procedures, regardless of whether
23 that professional is under contract with the department. Nothing in this
24 section shall be construed so as to prohibit a volunteer from participating in
25 the department's screening programs.

26 {b}--If the rules require an individual to be screened, the individual
27 shall undergo approved screening tests for vision and hearing disorders and
28 any other special senses and communication disorders specified by the board.
29 The individual shall comply with the board's requirements as soon as possible
30 after the individual's admission to a preschool or school and within the time
31 period set by the board. The individual, or if the individual is a minor, the
32 minor's parent, managing conservator, or guardian, may elect to substitute one
33 or more professional examinations for the required screening tests.

34 {c}--An individual is exempt from the screening requirements of this
35 section if the screening tests conflict with the tenets and practices of a
36 recognized church or religious denomination of which the individual is an
37 adherent or a member. The individual, or if the individual is a minor, the
38 minor's parent, managing conservator, or guardian, shall submit to the
39 admitting officer on or before the day of admission an affidavit stating the
40 objections to screening.

41 {d}--The chief administrator of each preschool or school shall ensure

1 that each individual admitted to the preschool or school has complied with the
2 screening requirements set by the board or has submitted an affidavit of
3 exemption.

4 (e)--The chief administrator of each preschool or school shall maintain
5 screening records for each individual who is in attendance on a form
6 prescribed by the department, and those records must be open for inspection by
7 the department or local health department. An individual's screening records
8 may be transferred among preschools and schools without the specific consent
9 of the individual, or if the individual is a minor, the minor's parent,
10 managing conservator, or guardian.

11 (f)--Each preschool or school shall submit to the department an annual
12 report on the screening status of the individuals in attendance during the
13 reporting year and shall include in the report any other information required
14 by the board. The report must be on a form prescribed by the department and
15 must be submitted according to the board's rules.

16 (g)--The department may coordinate the special senses and communication
17 disorders screening activities of school districts, private schools, state
18 agencies, volunteer organizations, and other entities so that the efforts of
19 each entity are complementary rather than fragmented and duplicative. The
20 department may provide technical assistance to those entities in developing
21 screening programs. The department may provide screening personnel,
22 equipment, and services only if there are no other means for meeting the
23 screening requirements.

24 Section-5--(a)--The department may provide remedial services either
25 directly or through approved providers to individuals who have certain special
26 senses and communication disorders and who are not eligible for special
27 education services administered by the Central Education Agency through the
28 public schools, but who are eligible for remedial services provided by the
27 department.

28 (b)--The board shall adopt rules to describe the type, amount, and
29 duration of remedial services that the department may provide. The rules must
30 establish medical, financial, and other criteria to be applied by the
31 department in determining an individual's eligibility for the services. The
32 board may establish a schedule to determine financial eligibility and may
33 require an individual, or if the individual is minor, the minor's parent,
34 managing conservator, or guardian, to pay for or reimburse the department for
35 a part of the cost of the remedial services provided. Remedial services may
36 not be required without the consent of the individual, or if the individual is
37 a minor, the minor's parent, managing conservator, or guardian.

38 Section-6--(a)--In this section "other benefit" means a benefit to which
39 an individual is entitled, other than a benefit under this Act, for payment of

1 the costs of remedial services, including:

2 (1)--benefits received under a personal insurance contract;

3 (2)--payment received from another person for personal injury caused by
4 the other person's negligence or wrongdoing; and

5 (3)--payments received from any other source.

6 (b)--An individual is not eligible to receive remedial services
7 authorized by this Act to the extent that the individual or the parent,
8 managing conservator, or other person who has a legal obligation to support
9 the individual is eligible for some other benefit that would pay for all or
10 part of the services. On a prior showing of good cause, the department may
11 waive this requirement if the department finds that the enforcement of this
12 section would tend to disrupt the administration or prevent the provision of
13 remedial services to otherwise eligible recipients or defeat the purpose of
14 this Act.

15 (c)--An applicant for or recipient of remedial services authorized by
16 this Act shall inform the department, at the time of application or at any
17 time during eligibility and receipt of services, of any other benefit to which
18 the applicant or recipient may be entitled or to which the parent, managing
19 conservator, or other person who has a legal obligation to support the
20 applicant or recipient may be entitled.

21 (d)--The individual or the parent, managing conservator, or other person
22 who has a legal obligation to support an individual who has received remedial
23 services from the department that are covered by some other benefit shall
24 reimburse the department to the extent of the services provided when the other
25 benefit is received.

26 (e)--The department may recover the expenditure for services provided
27 under this Act from a person who does not reimburse the department as required
28 in this section or from any third party on whom there is a possible legal
29 obligation to pay other benefits and to whom notice of the department's
30 interests in the other benefits has been given. The department has a separate
31 and distinct cause of action, and the commissioner of health may, without
32 written consent, request the attorney general to bring suit in the appropriate
33 court of Travis County on behalf of the department. A suit brought under this
34 section need not be ancillary or dependent on any other action. In a
35 judgment in favor of the department, the court may award attorney's fees,
36 court costs, and interest accruing from the date on which the department first
37 provides services to the individual to the date on which the department is
38 reimbursed.

39 (f)--The department may modify, suspend, or terminate the eligibility of
40 an applicant for or recipient of remedial services after notice to the
41 individual affected and the opportunity for a fair hearing. Fair hearings

1 must be conducted in accordance with the board's informal hearing rules. The
2 board shall adopt rules containing criteria for action under this section.

3 Section-7.--(a)--The board shall adopt substantive and procedural rules
4 necessary to administer screening activities and provide remedial services.

5 (b)--The department may require that persons who administer special
6 senses and communication disorders screening tests complete an approved
7 training program, and the department may train those persons and approve
8 training programs.

9 (c)--The department shall monitor the quality of screening activities
10 provided under this Act.

11 (d)--The department may directly or through local health departments
12 enter and inspect records maintained by a preschool or school relating to
13 screening for special senses and communication disorders.

14 (e)--The department may enter into contracts and agreements necessary to
15 administer this Act, including contracts for the purchase of remedial
16 services.

17 (f)--The department may provide educational and other material to assist
18 local screening activities.

19 (g)--The department may conduct research and compile statistics relating
20 to the provision of remedial services to individuals with special senses and
21 communication disorders and relating to the availability of those services in
22 the state.

23 (h)--The department may accept appropriations, donations, and
24 reimbursements, including donations of prosthetic devices, and may apply those
25 items to the purposes of this Act.

26 (i)--The department shall select providers of remedial services according
27 to criteria established in rules adopted by the board.

28 (j)--The department shall compile and publish a report for the
29 legislature on or before February 1 of each year describing the conduct of the
30 program and its impact on public health.

31 Section-8.--(a)--A person who provides speech and language screening
32 services authorized by this Act must be appropriately licensed or trained and
33 monitored by a person who is appropriately licensed.

34 (b)--If the screening of hearing authorized by this Act is conducted by
35 persons other than appropriately licensed professionals, hearing screening
36 shall be limited to the screening of hearing sensitivity, and individuals
37 unable to respond reliably to such screening shall be referred to an
38 appropriately licensed professional.

39 (c)--A person who provides a professional examination or remedial
40 services authorized by this Act for speech, language, or hearing disorders
41 must be appropriately licensed.

1 Section-9.--(a)--An interagency committee on special senses and
2 communication disorders is established. The committee is composed of one
3 delegate appointed by the chief administrative officer of each of the
4 following agencies:

5 (1)--the Texas Commission for the Blind;

6 (2)--the Texas Commissioner for the Deaf;

7 (3)--the Texas Department of Human Resources;

8 (4)--the Texas Department of Mental Health and Mental Retardation;

9 (5)--the Central Education Agency;

10 (6)--the Texas Department of Community Affairs;

11 (7)--the Texas Department of Health;

12 (8)--the Texas School for the Deaf; and

13 (9)--the Texas School for the Blind.

14 (b)--The committee shall adopt written procedures for the conduct of its
15 duties and may elect officers as it finds necessary.

16 (c)--The committee shall assist the department in coordinating among
17 participating agencies the special senses and communication disorders
18 screening program and the remedial services programs.

19 (d)--The committee shall meet at least once each calendar year in Austin
20 and at other times and locations as the committee finds necessary.

21 (e)--Each delegate is entitled to be reimbursed by the appointing agency
22 for expenses incurred in performing his duties under this Act. The
23 reimbursement may not exceed the amounts specified in the General
24 Appropriations Act as transportation and per diem allowances for state
25 employees.

26 Section-12.--This Act shall be implemented in accord with the provisions
27 of professional license laws that pertain to professional examination and
28 remedial services for persons with special senses and communication
29 disorders.]

30 SECTION 2. This Act takes effect on September 1, 1989.

31 SECTION 3. The importance of this legislation and the crowded condition
32 of the calendars in both houses create an emergency and an imperative public
33 necessity that the constitutional rule requiring bills to be read on three
34 several days in each house be suspended, and this rule is hereby suspended,
35 and that this Act takes effect and be in force according to its terms, and it
36 is so enacted.

H. B. No.

2559

By

Gloria

A BILL TO BE ENTITLED

AN ACT

relating to certain regulatory functions and procedures of the Texas Department of Health involving screening of children who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services; providing for certification of screeners of children, and trainers of screeners; providing for a program of remedial services and approval criteria for providers of remedial services, and eligibility criteria; providing for notice and and hearing upon dinial, modification, suspension or revocation of affected interests; providing emergency authority; . . .

~~MAR 9 1989~~

1. Filed with the Chief Clerk.

~~MAR 29 1989~~

2. Read first time and Referred to Committee on

Public Health

3. Reported ___ favorably (as amended) (as substituted) and sent to Printer at ___

4. Printed and distributed at ___

5. Sent to Committee on Calendars at ___

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of ___ years, ___ nays, ___ present, not voting).

7. Motion to reconsider and table the vote by which H.B. ___ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of ___ years, ___ nays, and ___ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of ___ years, ___ nays, and ___ present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of ___ years, ___ nays, ___ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. ___ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of ___ years, ___ nays, and ___ present, not voting).

12. Ordered Engrossed at ___

13. Engrossed.

14. Returned to Chief Clerk at ___

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on ___

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by

(a viva voce vote.)

(___ years, ___ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by _____
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) (Substitute) by a (Non-Record
Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____